their affairs varies according to the circumstances. There is no absolute standard, but it may be said generally that the degree of care required varies directly with the risk involved. Those who engage in operations inherently dangerous must take precautions which are not required of persons engaged in the ordinary routine of daily life...."

On page 11 of the same volume of *Halsbury* under the subhead "Reasonable care" appears this passage: —

"In ordinary circumstances, or where simple operations are being performed, persons are not as a rule required to guard against every conceivable result of their actions, nor are they bound to exercise scientific care or to take extravagant precautions. They must have regard both to the probability of injury resulting, and to the probable seriousness of the injury. They may weigh the cost and the difficulties of the precautions. They are in general entitled to assume that others will comply with statutory regulations...."

Thus, the defendant may not be bound to close a factory because the floor is slippery (*Latimer* v. *A.E.C. Ltd.*[2]), or to immobilise an electric railway for a minor repair (*Harves* v. *Railway Executive*[3]), or to ensure the safe construction of a vehicle used by the fire service in an emergency (*Walt* v. *Hertfordshire County Council*[4]).

In the present case the railways provide a cheap and quick means of transport for residents of that part of the East Coast. The railway rules require that a clear passageway be kept from one end of the train to the other.

As learned counsel for the appellants submitted at the trial, the only way to ensure that no passenger stood on the gangway was to place a railway official at each door throughout the train and to manhandle and herd passengers into their coaches so as to ensure that they would remain inside between stations. In order to restrain passengers such as the respondent from dashing out of coaches for the steps while the train is moving into a station, the doors would have to remain shut until the train comes to a halt. Such additional precautions though feasible would be extravagant in both time and expense, and would defeat the purpose of providing cheap and efficient public transportation.

Guards would thus have to be posted at the doors at each end of the corridor, in trains with only corridor doors, and others at side doors if any throughout the train to ensure that all passengers remain within the coaches at all times whilst the train is in motion.

"In considering the difficulty, or cost, of remedial measures it is necessary to take into account not only the risk but also the importance of the object to be attained by the activity which creates the risk. If the activity in question is of little or no national importance, it might be that cost should not be taken into account, but in other cases there must be a point, as in practice there is, beyond which further remedial measures are prohibitive by reason of cost. A slight risk may be run if the cost of remedying it is unreasonably high, but the greater the risk the greater must be the cost of remedying it before remedial measures can be dispensed with. It is a question of degree in each case to be considered together with the importance of the end to be attained."

(*Charlesworth* on Negligence — Third Edition page 28 paragraph 49).

In *Daborn* v. *Bath Tramways Ltd.*,[5] Asquith J. said:

"In determining whether a party is negligent, the standard of reasonable care is that which is reasonably to be demanded in the circumstances. A relevant circumstance to take into account may be the importance of the end to be served by behaving in this way or in that. As has often been pointed out, if all the trains in this country were restricted to a speed of 5 miles an hour, there would be fewer accidents, but our national life would be intolerably slowed down. The purpose to be served, if sufficiently important, justifies the assumption of abnormal risk."

A balance, in our view has to be struck between the very purpose of providing this means of transport, and the negligible risk of injury which failure to take the more elaborate and costly precautions might entail.

"Common practice by persons habitually engaged in a particular operation is strong evidence of what is reasonable care in the performance of that operation." (*Mahon* v. *Osborne*[6]).

In *Vancouver General Hospital* v. *McDavid*[7] Lord Alness said:

"A defendant charged with negligence can clear (himself) if he shows that he has acted in accordance with general and approved practice."

The common practice of the Malayan Railways, mostly embodied in its rules and regulations in respect of the precautions taken for the physical wellbeing of passengers was described by Fonseka, the Guard (DW2) and in greater detail by the District Traffic Superintendent, Krai.

We would say that the evidence of the two, of a standard of care which had apparently stood the test of time as being both reasonably safe and practicable, has not been given the weight it deserves.

It is our considered opinion that the steps taken by the appellants to prevent passengers including the plaintiff from being at or near the steps were reasonably adequate in the circumstances, and that the appellants were therefore not negligent.

We would therefore, with respect allow the appeal and dismiss the cross-appeal, with costs.

Appellants' deposit back to appellants.

Appeal allowed.

Solicitors: *Skrine & Co.; Wilson & Co.*

TAN THANG SANG v. PUBLIC PROSECUTOR * CHOONG SZE FOONG v. PUBLIC PROSECUTOR

[A.C.J. (Ong C.J. (Malaya)) May 5, 1973]
[Kuala Lumpur — Selangor Criminal Appeals Nos. 26 and 28 of 1973]

Road Traffic Ordinance 1958, s. 34A — Dangerous driving — Punishment — Creditability of witness.

Criminal Law and Procedure — Sentence — Exemplary sentence in terrorem — Deterrence.

In these proceedings, the appellants appealed against conviction on a charge for dangerous driving under section 34A of the Road Traffic Ordinance, 1958 and against sentence.

Held: (1) the driving is not necessarily dangerous because it leads to fatal consequences but a verdict of guilt can only follow a finding of fault on the part of the driver;

* We are grateful to M/s Sharikat Pritam Singh of drawing our attention to this case and supplying us with a copy of the judgment.

(2) it is entirely contrary to principle to give exemplary sentences *in terrorem* more as a hoped-for deterrent. A motorist should not be condemned to serve a long stretch in prison unless in the manner of his driving he had shown a culpable and callous disregard for the safety of other road users.

Cases referred to:-

(1) *Ramiah* v. *Public Prosecutor* [1972] 2 M.L.J. 258.
(2) *Regina* v. *Gosney* [1971] 3 All E.R. 220; [1971] 3 W.L.R. 343.
(3) *Regina* v. *Spurge* [1961] 3 W.L.R. 23.
(4) *Reg.* v. *Downey* [1954] M.L.J. 148.
(5) *Public Prosecutor* v. *Quek Bak Seng* [1963] M.L.J. 137.
(6) *Ong Chan Tow* v. *Public Prosecutor* [1963] M.L.J. 160.
(7) *Public Prosecutor* v. *Rudguard* [1939] M.L.J. 56.
(8) *Lau Lim Peng* v. *Public Prosecutor* [1968] 2 M.L.J. 14.
(9) *Regina* v. *Guilfoyle* [1973] 2 All E.R. 844.

CRIMINAL APPEAL.

R. K. Nathan for first appellant.

N. Sinnadurai (*Miss*) for the second appellant.

Faidz Mohamad Darus (Deputy Public Prosecutor) for the respondent.

Ong C.J. (Malaya): Recently in exercise of revisionary powers† I had quashed the conviction and sentence of 18 months imprisonment passed on a motorist who had the misfortune of knocking down and fatally injuring a 67-year-old female pedestrian whilst she was undoubtedly attempting to cross a busy throughfare between gaps in vehicular traffic and thereby getting in the path of the accused's motor-car. He was convicted of dangerous driving under section 34A of the Road Traffic Ordinance, 1958, notwithstanding that there was no evidence whatsoever of his driving negligently or at an excessive speed or otherwise dangerously.

On the same date that the above motorist was convicted, a similar sentence of 18 months imprisonment and disqualification from driving all classes of vehicles for 10 years, was passed in the same court on another motorist, also charged under section 34A for dangerous driving by causing the death of an Indian cyclist who, at about 7.05 p.m. on January 4, 1972 had inadvertently got into the path of the accused's vehicle and thereby caused the collision.

Five days later, on March 7, 1973, a third case of alleged dangerous driving under section 34A was tried in the same court, resulting in the accused, a 34-year-old Chinese woman, driver of a school-bus, being convicted and sentenced to 12 months imprisonment, with 10 years driving disqualification. She had been involved in a fatal collision with a male Chinese scooterist at about 6.45 a.m. on March 29, 1972 at the 6th mile, Jalan Cheras, at which time and place, according to a *prosecution* witness, there was thick ground-mist reducing visibility to about 30 feet — or 40 to 50 feet according to the accused driver herself.

In the last two cases both accused have appealed against their conviction as well as the severity of their sentence. They had been tried in the Sessions Court before the same President, in whose grounds of decision there are certain salient features common to both and literally expressed in the same words.

In the first place the learned President quoted authority, *Ramiah* v. *Public Prosecutor*,(1) as to what constitutes dangerous driving, namely, that "there must be a situation created by the accused which, viewed objectively, is dangerous . . . and the prosecution must prove that when creating such a situation the accused was at fault. Fault involves a failure; a falling below the care and skill of a competent and experienced driver, in relation to the manner of driving and the relevant circumstances."

In this reference to authority, quoted from the judgment of Raja Azlan Shah J., the President was perfectly correct, as the learned judge himself had adopted the principles laid down by Megaw L.J. in *Regina* v. *Gosney*,(2) which was specifically referred to. There Megaw L.J. said: —

"We do not accept that the offence of dangerous driving is 'an absolute offence'. We do not accept that a driver who has been completely blameless can be held guilty. We do not accept that 'it matters not why the dangerous situation was caused'. . . . We would state briefly what in our judgment the law was and is on the question of fault in the offence of driving in a dangerous manner. It is not an absolute offence. In order to justify a conviction there must be, not only a situation which, viewed objectively, was dangerous, but there must also have been some fault on the part of the driver causing the situation."

In *Ramiah*, Raja Azlan Shah J. had taken special care to preface the passage quoted by the President with a caution against drawing a conclusion of guilt simply from the mere fact of death having resulted from driving, thus: —

"It is not the law under section 34A of the Road Traffic Ordinance that, merely because an accident had happened and a person had been killed, danger had in that sense arisen and therefore it must follow, as the night the day, that the appellant was driving in a manner dangerous to the public."

Proceeding next to state the law, as quoted, the judge went on to cite two reported cases where the facts in each clearly had established the offence of dangerous driving.

In both the present appeals the learned President expressed the view that the facts in *Ramiah* were equally in point to justify conviction in each case. It is almost axiomatic that no two road accident cases occur in precisely similar circumstances. What really matters is the principle of law enunciated in *Ramiah*, namely, that driving is not necessarily dangerous because it leads to fatal consequences, but that a verdict of guilt can only follow a finding of fault on the part of the driver.

In the case of *Ramiah*, his driving was manifestly dangerous. He was driving a huge omnibus along the Kuala Lumpur-Ipoh trunk road when, coming to its junction with Jalan Perhentian on the right, he did not stop or pause to see if the latter road was clear, but instead made the turn and ran into an approaching scooter, killing the pillion-rider.

In the present appeals, however, the facts were totally different. The male appellant Tan Thang Sang, who is 44 years old, had an unblemished driving record of 25 years. At 7.05 p.m. he was driving an Austin

† *Lee Ah Moi* v. *Public Prosecutor* [1973] 2 M.L.J. 132.

car along the road into Kuala Lumpur, which was 20 feet wide, following another vehicle, about three cars' length behind it, when an Indian cyclist, suddenly and unexpectedly strayed from the extreme edge of the road and got into the path of the appellant's car which struck the bicycle squarely on its rear wheel. The broken windscreen obviously proved that the cyclist had been thrown over the bonnet against the glass, and he died of brain haemorrhage. There were no eye-witnesses, except the appellant. His explanation was that there was heavy traffic going in both directions and he was keeping about 2 feet from the left side of the road and paying attention only to the vehicle ahead. "Suddenly" to use his own words, the cyclist whom he had seen cycling on the left edge of the road "swerved out to the right as if he was going to fall". The collision was inevitable as he could not swerve towards the traffic coming on his right.

The admitted speed of 25 to 30 miles per hour was not excessive and the prosecution never challenged him on this point or suggested that he was doing aught else except maintain his place in the procession of south-bound vehicles. It was not suggested that keeping 2 feet from the left of the road was in any way dangerous while there was two-way traffic along a 20-foot road. It was common ground that the cyclist was going in the same direction along the left edge of the road.

Now, had the appellant swerved further to his left and thereby run into the cyclist, whom he had already observed a few moments earlier, then he certainly could be said to have driven dangerously by putting the cyclist in jeopardy. *But* there was no evidence — nor any suggestion by the prosecution of any plausible reason — that he had done so.

On the contrary, the defence that it was the cyclist who suddenly veered from the path he was previously following was, to a certain extent, corroborated by the independent evidence of the police investigating officer Sgt. Mansur, who stated positively that the "road verge was uneven: one cannot cycle there". If, by reason of this uncontradicted fact, the cyclist found it necessary to avoid a pothole, rock or other obstruction to his following a straight course ahead, then he would only need to go round it. A twist of the handle to the right and straightening out immediately after passing whatever he had to avoid would only have taken a brief moment — though unfortunately a fractional moment too late to get out of the path of the approaching car. This seems to me a perfectly reasonable and probable explanation for the accident.

The learned President, however, seemed to have considered the defence a mere concoction of lies, and the reason he gave was that, if the bicycle was swerving to the right as alleged, *it would be presenting its offside to the oncoming car*, whereas it was struck directly from the rear, as proved by the damage to the rear wheel. In my view, the defence was misconceived, for it was never the defence case that the cyclist's swerve was to the extent, or in the manner, as if he intended to cross the road — thereby presenting his machine to be struck broadside. The evidence of the Sergeant, which lent evidence to the defence, was brushed aside and totally ignored.

Once a specific defence has been raised, as in this case, it must be considered with the rest of the evidence and if such defence leaves the court in reasonable doubt the accused is entitled to an acquittal. Once there is some evidence to support the defence raised, the onus of disproving such evidence rests upon the prosecution, which still has to prove its case beyond reasonable doubt: see *Regina* v. *Spurge*.[3]

The key to the conviction in this case may be found in this passage: —

> "Bearing in mind that the accused could only see a mere 20 feet ahead when he was travelling between 25-30 m.p.h. the only inference to be drawn is that accused came upon the cyclist suddenly. His act of driving at the given speed with such limited visibility was a dangerous act in itself. His driving into the rear of the bicycle was in the circumstances dangerous driving".

All that was said above missed the crucial point. Speed and visibility had nothing to do with fault when the appellant was doing nothing wrong in following the path of the car ahead at a speed which was perfectly reasonable. The proper question to be answered in determining the guilt or innocence of the appellant was whether it was he who moved into the path of the cyclist, or *vice versa*. Nothing in the sketch plan or the evidence of any witness pointed to the appellant being at fault. His fault has to be proved to support a conviction. I would therefore allow this appellant's appeal, quash the conviction and sentence and direct that his driving licence be returned to him.

I turn now to the appeal by Choong Sze Foong. She was 33 years old at the time and had held a driving licence unblemished for 7 years. At 6.45 a.m. on March 29, 1972 she was at the 6th mile, Jalan Cheras which is almost 40 feet wide. She had to turn right into Taynton View to pick up some students going to school. Arriving at the junction, she saw no vehicle behind her nor ahead. There was a thick ground mist, reducing visibility to 40 or 50 feet, according to her. She paused or slowed down in the middle of the road and then proceeded to turn right into the road leading to Taynton View. As she did so, a scooter ran into her bus on its near side.

The first person who arrived at the scene belonged to the army personnel at Mindef, who rode up on his motor-cycle. He saw a Vespa in the middle of the road and its rider lying dead close by. At the time there was, according to him, "a lot of mist and visibility was not good. Visibility was about 30 feet."

The crux of this case undoubtedly was the ground mist reducing visibility to at most 50 feet.

The learned President in his grounds of decision stated as a fact that "visibility was good. There was no mist about". As to the presence or absence of ground mist there were two conflicting versions. The appellant's evidence was fully corroborated by the Malay soldier who on this point was never challenged. But they were contradicted by a Malay housewife who lived near the scene of the accident and who claimed that she noticed the approach of both vehicles from a considerable distance, while opening her front window, but did not see the accident which happened when her back was turned. In examination-in-chief, she stated that it was a clear morning, but under cross-examina-

tion when specifically asked about mist, she explained that there was mist *after* the collision but nothing of the sort earlier.

I do not think the President should have summarily rejected the evidence of the soldier entirely, without stating any reasons for dismissing him as a witness of truth. Let the credit of the conflicting witness be weighed impartially by asking this question. There was, according to her evidence in chief, apparently no mist at all anywhere. Yet, within a matter of minutes, the mist descended on the scene. How and from where came this mist upon that spot? Have any of us ever experienced this strange phenomenon? Some mist could have drifted or been blown there — but in that case there must have been mist around close by — which was denied by her. Moreover, it is in my view, pertinent to ask whether, had there been no mist around, would the appellant lady have been so callous of human life that she would deliberately block the path of the oncoming scooterist. Or, would the latter, seeing the school bus in the middle of the road (where it should not be if it was going ahead) and opposite to a road junction, not immediately conclude that the bus was going into Taynton View?

It is logical to assume that the scooter was, before the accident, keeping to its own side of the road. Had there been no mist at all, it is in the highest degree inconceivable that the collision would ever have taken place — since each should have been visible to the other from hundreds of yards ahead. As the collision occurred in the middle of the road, it seems to me that the scooterist must have swerved in evasive action only at the very last moment. This could only be explained by poor visibility. Therefore, once it is accepted — as it should have been — that poor visibility led the appellant to expect no untoward incident arising because of her making the turn, then in my opinion the appellant was not at fault in doing so.

Even assuming the worst against her, she should not have been held guilty of anything more than driving without due care and consideration.

But, taking all the evidence into consideration, I think that the thick ground mist was the real and effective cause of the accident. In any case the sentence was excessive to the point of harshness. I would allow her appeal and quash her conviction and sentence which, in my opinion, were largely due to the learned President dealing with each of these two appellants as though they were themselves responsible for the sins of all motorists in general.

In the first place, in each of his judgments the President said: —

"According to figures supplied by the Selangor Traffic Police Chief in 1970 there were 15,417 accidents in Selangor of which 9,571 were in Kuala Lumpur. The corresponding figures for 1971 are 17,715 and 12,090. In 1972 there were 19,561 accidents in Selangor with 13,183 of them in Kuala Lumpur alone.

The total number of fatal accidents in Selangor for the years 1970, 1971 and 1972 were 331, 353 and 394 respectively. In Kuala Lumpur 163 people died on the roads in 1970, 153 in 1971 and 160 in 1972. In 1972 a total of 1,712 people died in fatal accidents throughout the country.

These figures are in themselves shocking.

It follows that, in the public interest, sentences in dangerous driving cases in the present day circumstances should be such as to reflect the seriousness of the situation.

In my opinion a sufficiently deterrent sentence was called for in the present case."

In the second place, although the learned President had, in a number of past judgments, which I have read, shown marked agility, I cannot but feel that — like Admiral Byng who was executed on board his flagship for cowardice in failing to join battle with a superior French fleet in order, it was said, "pour encourager les autres" — these two appellants were given exemplary sentences *in terrorem* more as a hoped-for deterrent to other motorists than because they had driven wilfully in a manner dangerous to the public. This is entirely contrary to principle.

I have regretfully reached this conclusion because of the prominence given in the President's judgments to a number of cases, as illustrative examples of dangerous driving for which custodial sentences had on appeal been substituted for fines.

First, *Reg* v. *Downey*[4] was cited where a fine was substituted by 5 months imprisonment. It was the case of a British soldier, driving off a heavy military truck without permission, partaking of alcohol and then driving at such speed along an open straight road that he lost control and ran into a Malay family who were keeping close to the side of the road. The high degree of culpability on the part of that driver was established beyond question. Secondly, the learned President cited *Public Prosecutor* v. *Quek Bak Seng*[5] where the driver of a 5-ton truck loaded with 41 passengers was attempting to overtake another similarly loaded truck, in disregard of a warning by the leading driver not to do so, and nevertheless attempting to overtake whilst the other truck was travelling along the crown of the road. In the result Quek ran off the road into a swamp, killing 4 of his passengers. It was again a clear case of reckless and dangerous driving, for which a prison sentence of 6 months was well deserved.

Thirdly, in the Singapore case of *Ong Chan Tow* v. *Public Prosecutor*,[6] the bus driver coming out of a side-road into the main road leading to the city, ignored a "Halt" sign at the junction, but emerged without stopping and ran into a Morris Minor coming from the city on its own proper side of the road. It was, of course, manifestly a case of dangerous driving for which 6 months imprisonment was quite appropriate.

Fourthly, in *Public Prosecutor* v. *Rudguard*[7] the facts which led the accused to plead guilty to a charge under section 304A of the Penal Code were summarised by Terrell Ag. C.J. as follows: —

"1. The accused was driving at between 40 and 45 miles an hour and following another car going the same pace at a distance of about 50 yards.

2. On approaching the bend in the road at the 2nd mile from Kuala Lumpur this pace was maintained, although the bend in the road would prevent the accused from seeing any car ahead. The car in front would further obscure the view of the car behind.

3. The accused drove in the middle of the road.

4. The foot brake was inefficient. It was a hydraulic brake which did not function on being first pressed down. To have any effect it had to be pressed down twice and even then

was only about 75 per cent efficient and operated mainly on the near back wheel. This not only caused the car to swerve to the right, but also necessitated an appreciable delay. In a second, at 40 miles per hour, the car would travel 60 feet.

5. The steering gear was very loose. The effect of this is that on the wheel being turned the car would not immediately respond. There would be a definite lag.

6. As the oncoming cyclist had actually moved on to the 8 feet grass verge there would have been no accident if the accused had succeeded even in keeping to the road, albeit well to his wrong side. In fact the off wheels of the car went on to the grass verge for a distance of 40 feet.

7. The brakes were never applied at all."

Lastly the President cited from the judgment of Chang Min Tat J. in *Lau Lim Peng* v. *Public Prosecutor*,[8] where the accident occurred in a built-up area, at a bend known to be a dangerous corner (with a sign to that effect advising caution) and the appellant's lorry was going so fast in attempting to overtake the deceased motor-cyclist that he was unable to avoid overturning and running from behind into the innocent motor-cyclist riding on his side of the road at a time when it was not necessary to drive anywhere near him. The judge altered the sentence from a fine of $1,000 to 6 months imprisonment. The facts speak clearly for themselves.

All the above cases were, in my opinion, proper to cite, provided that these appellants had behaved as heinously as Downey and the others. To thus equiparate the appellants with those people not only implied that these appellants deserved more condign punishment, but also a finding of "dangerous driving" indistinguishable from the conduct of those other drivers. In none of the five cases were the relevant facts set out at all. Being classed together for punishment, in total disregard of the facts of each case, it necessarily follows that these appellants had also been denied due and proper consideration of their defences and the different circumstances under which they became involved in their misfortune. In effect their fault was considered as if indistinguishable from Downey's. The doubling and trebling of the maximum sentences passed on Downey and the others is indeed the clearest indication that the degree of fault (if any) shown by these appellants had not only been completely lost sight of, but held to be even more heinous than the kind of driving disclosed in those other cases. In my view such miscarriage of justice must be rectified. I do not think any motorist should be condemned to serve a long stretch in prison unless in the manner of his driving he had shown a culpable and callous disregard for the safety of other road users. Making scapegoats of innocent motorists is anathema to our administration of justice.

I trust therefore that the guidelines laid down by Lawton L.J. in *Regina* v. *Guilfoyle*,[9] which I have recently caused to be circulated to all subordinate courts, will be studied and followed.

Order accordingly.

Solicitors: *R. K. Nathan & Co.; Lovelace & Hastings.*

ARA BINTE AMAN & ORS. v. SUPERINTENDANT OF LANDS AND MINES, 2ND DIVISION

[A.C.J. (B.T.H. Lee J.) December 17, 1973]
[Kuching — Civil Appeal No. 9 of 1972]

Native Customary Law — Sarawak — Customary rights over land — No evidence of occupation — No proof of custom — Land a Government reserve — Customary Rights cannot be exercised over it — Difference in Customary Law applicable to 2nd Division from that applicable to 3rd Division — Land Settlement Ordinance, (Sarawak Cap. 28) s. 66 — Land (Classification) Ordinance, 1949, s. 8 — Land Code (Sarawak Cap. 81), s. 10(2) — Lands Ordinance (Cap. 27 — Sarawak Revised Laws 1946), ss. 91(1), 108.

In this case the appellants appealed against the decision of the District Court, Simanggang, which had dismissed their claim of customary rights over certain lands.

Held, dismissing the appeal: (1) on the facts there was no reliable evidence of occupation of the land and the learned magistrate was right in rejecting the claim;

(2) as the land was Government reserve land, no customary rights could be exercised over it.

Cases referred to:-

(1) *Nyalong* v. *Superintendant of Lands and Surveys, 2nd Division, Simanggang* [1967] 2 M.L.J. 249.

(2) *Injing* v. *Tuah & Anor.* [1971] 1 M.L.J. 115.

(3) *Sumbang anak Sekan* v. *Engkarang anak Ajah* [1958] S.C.R. 95.

(4) *Maqbul Ahmad* v. *Oukar P.N. Singh* A.I.R. 1935 P.C. 5.

(5) *Newcastle City Council* v. *Royal Newcastle Hospital* [1959] 1 All E.R. 734.

(6) *Keteng bin Haji Li* v. *Tua Kampong Suhaili* [1951] S.C.R. 9.

(7) *Sijip anak Majan* v. *Reg.* [1954] S.C.R. 40.

(8) *Local Government Board* v. *Arlidge* [1915] A.C. 158.

CIVIL APPEAL.

D. Tajem for the appellants.

D. J. Morris (Legal Adviser, Lands and Surveys Department, Kuching) for the respondent.

B.T.H. Lee J.: This is an appeal from a judgment of the District Court, Simanggang, given on the 4th September, 1972.

The appellants (17 in all) alleged that they are claiming customary rights over the land, the subject matter of this appeal.

On behalf of the appellants a number of grounds were raised.

To my mind the main question upon which this appeal turns is simply one of fact.

I do not propose to recapitulate in detail the evidence that was given by all the 17 appellants. But it would be expedient to set out shortly the evidence which bears on the question of customary rights over the land of which they lay claim.

That all the appellants in this case failed to discharge the burden of proof which lay upon them to prove that at the time of Settlement they were entitled to the parcels of land is plain enough.

Their evidence has been proved to be uncorroborated, unconvincing, contradictory, and based partly on hearsay evidence.